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No. 87-181

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1987

ABRAHAM SRULOWITZ,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

REPLY TO THE MEMORANDUM OF THE UNITED STATES IN OPPOSITION

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PETITIONER'S REPLY TO THE MEMORANDUM OF THE UNITED STATES IN OPPOSITION

The United States has opposed the Petition for a Writ of Certiorari on the sole ground that Petitioner's contention "is not presently ripe for review by this Court." Memorandum for the United States in Opposition at 3. Petitioner respectfully disagrees.

The Court's certiorari jurisdiction is plenary. Forsyth v. Hammond, 166 U.S. 506, 511-13 (1897). It is not dependent upon the status of the case. See, e.g., Thornburgh v. American College of Obstetricians, 106 S.Ct. 2169, 2175-76 (1986); see generally R. Stein, E. Grossman, S. Shapiro, Supreme Court Practice, 40-41 (6th ed. 1986). The Court has not hesitated to exercise that jurisdiction to decide important questions of law, even though presented by a judgment of the Court of Appeals denying a motion to dismiss, e.g., Blue Chips Stamps v. Manor Drug Stores, 421

U.S. 723, 727 (1975); or remanding a case for a new trial; e.g., United States v. General Motors Corp., 323 U.S. 373, 377 (1945); or requiring a case to proceed in equity, rather than before a jury, Beacon Theatres, Inc. v. Westover, 359 U.S. 500 (1959). This case too presents an important question of law which merits review by this Court at this time.

The government's invocation of the concept of ripeness or prematurity is particularly inappropriate in this case. The issue presented is not an abstract or hypothetical one which may or may not arise. It is concrete and real; it has arisen. No facts are missing which would guide the Court in making a well-informed decision. Finally, the parties surely do have something at stake which will guarantee adequate presentation of the issue by both sides. The facts have all been developed and the issue fully litigated.

In essence, all the United States is really saying is that subsequent events -- such as an acquittal after a new trial or a dismissal on the remand -- may make it unnecessary for the Court to decide the question presented or that, if need be, the issue may be considered by the Court after a final judgment of conviction after retrial. But, as the cases cited above demonstrate, that is not good or sufficient reason to deny certiorari. There is no reason to avoid or postpone resolution of the issue presented; the case does not present a Constitutional question or the possibility of a confrontation with the legislature. Rather, it concerns the operation of the Federal Rule of Criminal Procedure dealing with the sealing of indictments. The respective roles of the magistrate and the U.S. Attorney in the sealing process is a subject of importance to

the daily functioning of the federal courts and of the federal criminal justice system. Leaving the questions presented by this case without definitive or early resolution serves no policy interests whatsoever.[1]

From Petitioner's point of view, the issue is plainly ripe for decision. If Petitioner is correct, the statute of limitations has run and he cannot be tried or punished for the crime with which he is charged. To require him to stand trial again because he may present the issue to this Court after a final judgment of conviction or because he may be acquitted imposes an enormous human cost on him and a substantial cost on the government.

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[1]The Court of Appeals for the Second Circuit has stayed issuance of the mandate pending this Court's disposition of the case. This suggests that the appeals court recognizes that review by the Supreme Court may be appropriate at this time.

CONCLUSION

For these reasons, and for the reasons set forth in the Petition, Petitioner respectfully asks that the writ of certiorari be granted.

Respectfully submitted,

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